

apex, and a plurality of V-shaped spacing elements 26 separated by slots 28. (column 2, lines 60-65). As shown in Fig. 4, each slot 28 receives a clamp 36 which retains two edges 38 of two plates 40 forming evaporative cooling channels (not shown) of the evaporative heat exchanger 12. In the embodiment of Fig. 2, a fiberglass-woven cord 34 lays in contact with the oblique walls 24 to filter the water and to distribute the water equally to each slot 28. In the embodiment of Fig. 6, a grate 50 is used. In the embodiment of Fig. 7, a porous plastic material 52 is used that is formed in a V-shape to lay in contact with the oblique walls 24 of the trough and within an upper portion of the V-shaped channel of the trough. (Column 4, lines 9 to 12). Slots are formed in the porous material 52 to provide uniform spacing between the attached edges of the plates forming the evaporative cooling channels.

Claim 1 is directed to a liquid distributor comprising "at least one channel for receiving a flow of liquid. . . ; and areal guide means extending below said channel to receive and laterally disperse. . . the streams of liquid flowing from said apertures of said channel". The porous plastic material 52 of Acker is not an areal guide means.

Reference is made to each of Figs. 2 and 5 of applicant's drawings for an illustration of an areal guide means. Further, the description of this application in the paragraph bridging pages 4 and 5 describes the guide means 4 of Fig. 2 as being made of a metal weave or a fine mesh expanded grid. Still further, Webster's New 20th Century Dictionary, Unabridged Section Edition, describes the term "areal" as "pertaining to an area." Clearly the block-like structure 52 of Ackers does not constitute an areal guide means.

Claim 1 further requires the areal guide means to have "a drip edge at a lower end for dispensing drops of the liquid received thereon along longitudinally spaced apart points". There is no disclosure is Acker of such a structure. In the Fig. 7 embodiment, water flows through the porous spacing elements of the structure 52 and laterally into the evaporative cooling channels. (Column 4, lines 18 to 20). That is to say, the water flows sideways out of the plastic material 52 and into the area defined by the slots 28 in the oblique side walls 24 for distribution onto evaporative cooling surfaces of plates that are not illustrated. (See column 3, lines 47 to 53).

Still further, claim 1 requires "at least one gutter disposed below said channel. . . having a throttle means for distributing the liquid descending on said guide means of a hydrodynamic balance." There is no such structure in Acker.

Note is made of the Examiner's allegation that the trough 14 in Fig. 7 of Acker has a tapering region and a gap which throttles liquid flow through the distributor. Issue is taken in this respect. Acker teaches that the porous plastic material 52 receives the flow of water and that the water can flow through the porous spacing elements into the evaporative cooling channels that would be located in the slots 28. There is no teaching of any throttling of any liquid flow.

Further, the Examiner has not presented any basis in fact and/or technical reasoning to reasonably support a determination that the allegedly inherent characteristic necessarily flows from the teachings of Acker. "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic

necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original)

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted)

In view of the above, a rejection of claim 1 as being clearly anticipated by Acker is not warranted pursuant to the provisions of 35 USC 102.

Claim 4 depends from claim 1 and further requires the gutter of claim 1 to include "a pair of walls defining said throttle means". The trough 14 shown in Fig. 7 of Acker does not have a pair of walls defining a throttle means. Further, the Examiner apparently agrees in view of the allegation that Acker has a gap which throttles liquid

flow. This gap, as can be seen in Fig. 6, is not defined by a pair of walls. Accordingly, a rejection of claim 4 as being anticipated by Acker is not warranted pursuant to the provisions of 35 USC 102.

Claim 5 depends from claim 4 and further requires the walls that define the throttle means to define a downwardly tapering region and a gap "with said guide means disposed in and extending through said gap. . . ". Acker does not describe the porous plastic material 52 as extending through any gap between the oblique walls 24. Accordingly, a rejection of claim 5 as being anticipated by Acker is not warranted pursuant to the provisions of 35 USC 102.

Claim 10 depends from claim 5 and further requires the drip edge of the guide means to have "a plurality of recesses at spaced apart intervals". There is no such a structure in Acker. Note also that the porous plastic material 52 of Acker is seated in the oblique walls 28 and cannot define a drip edge. Accordingly, a rejection of claim 10 as being anticipated by Acker is not warranted pursuant to the provisions of 35 USC 102.

Claim 15 contains recitation similar to claim 1. Accordingly, for reasons expressed above with respect to claim 1, a rejection of claim 15 as being anticipated by Acker is not warranted pursuant to the provisions of 35 USC 102.

Claim 15 contains recitations similar to claims 4 and 5. Accordingly, for reasons expressed above with respect to each of claims 4 and 5, a rejection of claim 16 as being anticipated by Acker is not warranted pursuant to the provisions of 35 USC 102.

Claim 17 contains recitations similar to claim 1. Accordingly, a rejection of claim 17 as being anticipated by Acker is not warranted pursuant to the provisions of 35 USC 102 for the above reasons.

Claim 20 depends from claim 17 and contains recitations similar to claims 4 and 5. For reasons expressed above with respect to claims 4 and 5, a rejection of claim 20 is being anticipated by Acker is not warranted pursuant to the provisions of 35 USC 102.

Claim 2 has been rejected as being unpatentable over Acker. Issue is taken in this respect.

The Examiner alleges that it would be obvious to one of ordinary skill in the art to arrange the troughs 14 of Acker in parallel with the pipes 44. However, this would not be obvious since each pipe 44 would only deliver water to a single trough 14. This would be contrary to the teachings of Acker that requires a pipe 44 to deliver water to multiple troughs 14. Further, using a parallel arrangement of pipes 44 and troughs would materially effect the application of the apparatus since the distribution of water would be seriously reduced. Accordingly, a rejection of claim 2 as being unpatentable over Acker is not warranted pursuant to the provisions of 35 USC 103.

Claim 6 depends from claim 5 and further requires the guide means to be a mesh having a fine mesh structure for distribution of a liquid with low viscosity. The Examiner alleges that it would be obvious to substitute a mesh structure for the porous material 52 of Fig. 7 of Acker. However, to do so would apparently result in a structure similar to that shown in Fig. 6, namely, use of a grate 50. However, such a structure would not satisfy the requirements of claim 5 as noted above. Accordingly, a rejection of claim 6

as being unpatentable over Acker is not warranted pursuant to the provisions of 35 USC 103.

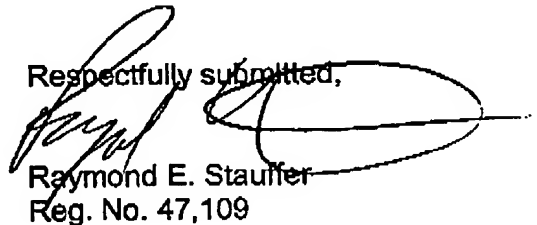
Claim 7 requires the guide means of claim 5 to be a mesh "to define broad gaps between said mesh and said walls of said gutter for distribution of a liquid with high viscosity". Substituting a mesh for the porous plastic material 52 of Fig. 7 of Acker would not result in such a claimed structure. Accordingly, a rejection of claim 7 as being unpatentable over Acker is not warranted pursuant to the provisions of 35 USC 103.

Claim 18 depends from claim 17 and contains recitations similar to claim 2. Accordingly, for reasons as expressed above with respect to claim 2, a rejection of claim 18 as being unpatentable over Acker is not warranted pursuant to the provisions of 35 USC 103.

With the allowance of claims 1 and 17, the Requirement for Restriction should be withdrawn.

The application is believed to be in condition for allowance and such is respectfully requested.

Respectfully submitted,



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